U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30001624

Date: MAR. 5, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a television and film producer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner met the initial evidence requirements for the classification by establishing her receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

As a preliminary matter, we acknowledge that the Petitioner has been the Beneficiary of an approved O-1B petition. Although USCIS has approved at least one O-1B nonimmigrant visa petition filed on behalf of the Petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1B category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field. 8 C.F.R. § 204.5(h)(2).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

On appeal, the Petitioner submitted a Form I-290B, Notice of Appeal or Motion; a copy of the Director's decision; and material originally included with her petition. The Petitioner's brief presents explanations previously submitted for why the record establishes her eligibility and states that the Director's "denial of her employment-based immigrant visa petition should be reconsidered." An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The Petitioner does not specifically contest the

Director's decision and requests only that the evidence of record be "reconsidered." While the Petitioner reiterates previous claims of eligibility, she does not point to any legal or factual error in the decision.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director provided a detailed analysis of evidence submitted for each of the claimed criteria and discussed how the evidence did not sufficiently demonstrate that the Petitioner met each criterion.

For example, while the record showed the Petitioner received awards, the Director determined, in part, that the record did not include documentation demonstrating that the awards were nationally or internationally recognized; the Director explained that national and international recognition comes through awareness and accolades conferred by those in the field and that recognition should be evident though specific means, such as through media coverage.

As another example, the Director pointed out that, while the record showed the Petitioner's membership with an association in her field, the documentation submitted as evidence of membership requirements did not meet the plain language of the criterion; the Director listed the requirements and explained that they do not stipulate that members, including the Petitioner, obtained membership based on their outstanding achievements as judged by recognized national or international experts in their disciplines or fields.

As a final example, the Petitioner reviewed screenshots and articles from several websites that the Petitioner claimed were evidence of published material about her in professional or major trade publications or other major media. The Director explained that the record did not include documentation showing that these websites constituted any form of media listed in the criterion. The Director also noted that several documents did not include certified English language translations and, therefore, would not be considered.

The Director thoroughly analyzed the Petitioner's evidence and arguments and provided her with a compete decision reaching the correct conclusion. On appeal, as stated above, the Petitioner does not contest the Director's decision and reiterates the reasons she believes she meets the eligibility requirements for all of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner does not provide sufficient evidence to overcome the Director's conclusions.

ORDER: The appeal is dismissed.